

REMARKS

Applicants have carefully reviewed this Application in light of the Final Office Action mailed January 9, 2008. Claims 1-48 are pending in this Application and Claims 1-48 stand rejected under 35 U.S.C. § 103(a). Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 103

Claims 1-4, 9, 10, 15, 16, 24-27, 32, 33, 38, 39, and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0085701 by Eric W. Parsons et al. ("*Parsons*") in view of U.S. Patent 6,075,992 issued to Billy G. Moon et al. ("*Moon*").

Claims 5-8, 11-14, 17-23, 28-31, 34-37, 40-46, and 48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Parsons*, in view of *Moon*, in view of U.S. Patent No. 6,493,324 issued to John L. Truetken ("*Truetken*").

Parsons discloses a system for routing inbound communications to various phones or messaging devices based on the presence of the intended recipient. The user of the system sets up routing profiles and indicates his or her "presence context" and the system routes inbound communications according to the profile enabled by the current presence context. (Page 2, ¶¶ [0011]-[0012]). The only interaction between the user associated with a given inbound communication is the ability to acknowledge receipt of a *text message* to prevent the system from resending the same message to a backup messaging device. (Page 8, ¶ [0081]).

Moon discloses a method of automatically handling initiation of a call by a portable intelligent communications device to a designated recipient. (Col. 2, lines 18-21). The method includes storing a time range by which the designated recipient may be called at a particular phone, determining a local time for the designated recipient and determining from the local time whether to automatically initiate or provide a prompt for initiation of a call to the designated recipient based on whether the local time is within the time range. (Col. 2, lines 21-33).

Claim 1 recites a method comprising “generating a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled commitment with a mediated party.”

Claim 15 recites a method comprising “generating a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled voice-based commitment with a mediated party.”

Claim 24 recites a computer program product comprising a computer program capable of “generat[ing] a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled commitment with a mediated party.”

Claim 38 recites a computer program product comprising a computer program capable of “generat[ing] a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled voice-based commitment with a mediated party.”

Claim 47 recites a system comprising a mediation system capable of “generating a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled commitment with a mediated party.”

Applicants respectfully submit that the cited references fail to disclose every element of Applicants’ invention. Further, there is no motivation, suggestion or teaching to combine *Parsons* with *Moon*. Each of *Parsons* and *Moon* fails to teach at least a method comprising “generating a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled commitment with a mediated party,” as recited in Claim 1. The cited references also fail to disclose a method for facilitating mediated virtual communication comprising “generating a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled voice-based commitment with a mediated party,” as recited in Claim 15. Additionally, *Parsons* and *Moon* fail to teach or suggest a computer program product comprising a computer program enabled to “generate a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled commitment with a mediated party,” as recited in Claim 24. *Parsons* and *Moon* further fail to disclose a computer program product comprising a computer

program enabled to “generate a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled voice-based commitment with a mediated party,” as recited in Claim 38. Finally, the cited references fail to teach or suggest a system for facilitating mediated virtual communication comprising a mediation system capable of “generating a pending mediated commitment based on the availability status, the pending mediated commitment indicating a scheduled commitment with a mediated party,” as recited in Claim 47.

The Examiner correctly conceded that *Parsons* fails to teach these elements of Claims 1, 15, 24, 38 and 47. However, the Examiner alleges that these elements are taught by Column 5, line 60 - Column 6, line 25 of *Moon*. The cited portion of *Moon* states:

Control buttons 80 and 82 are provided so as to "Cancel" the call request and display "Other" options (e.g., initiate the call on another phone number), respectively. It will be appreciated that even if the call is intended for a recipient within the same area code or time zone, the apparatus and method of the present invention may still be utilized to ascertain which of several phone numbers should be contacted for such call recipient at a given time.

Should the local time determined for the call recipient fall outside the time range for all such stored phone numbers, phone dialer software application 50 will depict a different screen display 84 on display screen 22 of portable intelligent communications device 10 (see FIG. 5) on which one of several available messages 86 will preferably be shown (box 132). Examples of message 86 include initiating the call to the designated recipient at a different phone number and a reminder to initiate the call to the designated recipient during a particular time range, but is not limited thereto. A control button 85 ("Schedule Call") is provided for transferring to a screen display in a calendar/to do software application 87 (decision box 134), where the phone call may be scheduled for initiation at a later time or date in accordance with the time ranges/days in which the designated recipient is available (box 136).

(Col. 5, line 60 - Col. 6, lines 25). However, this portion of *Moon* fails to teach a “pending mediated commitment” which indicates a scheduled commitment with a mediated party. Instead,

Moon merely teaches a range of times in which a designated party should be called, but not a specific scheduled commitment with such party.

Again, Applicants reiterate their earlier argument that the phrase “pending mediated commitment,” if interpreted consistently with the English language, inherently relates to a future event to occur at a scheduled time. For example, “pending” is defined as, *inter alia*, “not yet decided,” “impending” or “imminent.” (Merriam-Webster’s Collegiate Dictionary, Tenth Edition). “Commitment” is defined as, *inter alia*, “an agreement or pledge to do something *in the future*.” (Merriam-Webster’s Collegiate Dictionary, Tenth Edition) (emphasis added). Thus, it is unreasonable and inconsistent with the English language for the Examiner to correlate a desirable range of times to call a person “pending mediated commitment,” as the setting of time ranges in *Moon* does not relate to a “not yet decided,” “impending” or “imminent” event, nor does it relate to “an agreement or pledge to do something in the future.” The only thing “not yet decided” in *Moon* is whether or not the caller will at some point call a designated recipient, and this is clearly not a “pending mediated commitment.” Thus, given such context, no portion of *Moon* teaches, suggests or discloses “generating a pending mediated commitment.” Thus, the cited reference fails to disclose the recited elements and, therefore, cannot anticipate Claims 1, 15, 24, 38 and 47.

Given that Claims 2-15 depend from Claim 1, Claims 15-23 depend from Claim 15, Claims 25-37 depend from Claim 24, Claims 39-46 depend from Claim 38, and Claim 48 depends from Claim 47, Applicants respectfully submit that Claims 2-15, 15-23, 25-37, 39-46, and 38 are allowable. As such, Applicants respectfully request that the Examiner allow Claims 1-48.

Improper Finality of Office Action

Applicants respectfully submit that the Office Action was improperly deemed final by the Examiner, and respectfully request that the finality of the Office Action be withdrawn by the Examiner. According to M.P.E.P. § 706.07(a), an action on the merits may be final “except where the examiner introduces a new ground of rejection that is neither necessitated by the

applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. 1.97(c) with the fee set forth in 37 C.F.R. 1.17(p)."

In the present case, the Examiner has rejected Claims 1-4, 9, 10, 15, 16, 24-27, 32, 33, 38, 39, and 47 for the first time as being obvious under *Parsons* in view of *Moon*, and has rejected Claims 5-8, 11-14, 17-23, 28-31, 34-37, 40-46, and 48 for the first time as being obvious under *Parsons*, in view of *Moon*, further in view of *Truetken*. In the previous Office Action, the Examiner rejected Claims 1-4, 9, 10, 15, 16, 24-27, 32, 33, 38, 39 and 47 as being anticipated by *Parsons*, and rejected Claims 5-8, 11-14, 17-23, 28-31, 34-37, 40-46 and 48 as being obvious under *Parsons*, in view of *Truetken*. In addition, while the Applicants made amendments in their prior Response to Office Action, such amendments were made to overcome a rejection under 35 U.S.C. § 101, and thus the Examiner's new ground of rejection was not necessitated by Applicants' amendments. Furthermore, *Moon* has never been cited in an Information Disclosure Statement filed by the Applicants with respect to the current application, so the Examiner's rejection cannot be based on information submitted in an Information Disclosure Statement.

For at least these reasons, the Examiner has introduced a new ground of rejection for Claims 1-48, making finality of such rejections improper. Accordingly, Applicants respectfully request the currently-pending Office Action be deemed non-final, and the finality of the Office Action withdrawn.


CONCLUSION

Applicants appreciate the Examiner's careful review of the application. Applicants have now made an earnest effort to place this case in condition for examination and allowance. For the foregoing reasons, Applicant respectfully requests reconsideration of the application and allowance of Claims 1-48.

Applicants believe there are no fees due at this time; however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2581.

Respectfully submitted,
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Date: Feb 17, 2008

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